

## REMARKS

### I. INTRODUCTION

Claims 1, 4, 5, 23, 29, 32 and 33 have been amended to more particularly point out and distinctly claim the subject matter of the present invention. The Abstract has been replaced. No new matter has been added. Thus, claims 1-37 remain pending in the present application. In view of the above amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable.

The Examiner objected to the Specification because the title page was missing and the abstract exceeded 150 words. (*11/19/03 Office Action*, ¶¶ 1-2, p. 2). The Examiner rejected claims 4 and 5 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. (*11/19/03 Office Action*, ¶¶ 3-4, pp. 2-3). The Examiner also rejected claims 1-12, 14-34, 36 and 37 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,161,142 to Wolfe et al. (hereinafter “Wolfe”). (*11/19/03 Office Action*, ¶¶ 5-7, pp. 3-9). Finally, the Examiner rejected claims 13 and 35 under 35 U.S.C. 103(a) as being unpatentable over Wolfe in view of U.S. Patent No. 6,317,784 to Mackintosh et al. (hereinafter “Mackintosh”). (*11/19/03 Office Action*, ¶¶ 8-11, pp. 9-10).

### II. THE OBJECTIONS TO THE SPECIFICATION SHOULD BE WITHDRAWN

The Examiner objected to Applicants’ disclosure because it was missing page 1 which in fact includes the title of the invention and the names of the inventors. A copy of page 1 is enclosed herewith.

The Examiner also objected to the format of the Abstract, and reminded Applicants of the proper language and format for an abstract of the disclosure. Applicants have replaced the previously submitted Abstract with an Abstract which complies with this standard. Accordingly, it is respectfully requested that the objections to the specification of the present application be withdrawn.

### **III. THE 35 U.S.C. § 112 REJECTIONS SHOULD BE WITHDRAWN**

The Examiner rejected claims 4 and 5 on the grounds that an insufficient antecedent basis was provided for “the system.” However, it is clear upon reading each of these claims that “the system” refers to the “personal broadcast server system” of claim 1. Although this reference is readily apparent, claims 4 and 5 have been amended to clarify that the system in actuality “resides on” a single or multiple computing device(s). Accordingly, it is respectfully submitted that these claims satisfy the requirements of 35 U.S.C. 112, second paragraph, and that the rejection of these claims be withdrawn.

### **IV. THE 35 U.S.C. § 102(e) REJECTIONS SHOULD BE WITHDRAWN**

The Examiner rejected claims 1-12, 14-34, 36 and 37 as being anticipated by Wolfe. Wolfe describes a system and method for delivering programmed songs and targeted advertisements to individual users. (*See Wolfe*, Abstract). Information regarding the traits and preferences of each user is stored in a database, while information regarding advertisements and a library of music are stored in separate databases. (*See Wolfe*, Col. 4, ll. 3-26). When a user requests a particular musical works, a search is conducted for that selection and a “response

packet" is created and sent to the user. (*See Wolfe*, Col. 6, ll. 25-42). This response packet contains one or more songs and advertisements. (*See id.*).

The Examiner rejected claim 1 in part because of Wolfe's mention that musical material and advertisements which are transmitted may vary as a function of the information contained in the database of information regarding a user's traits/preferences. (*See 11/19/03 Office Action*, ¶ 7, p. 4). However, Wolfe never discusses a "selection of broadcast elements" as recited in claim 1. Wolfe at best only indicates that a "packet" of a *requested* song and an advertisement may be assembled, but fails to disclose any type of system for *selecting* an appropriate audio or visual to be transmitted based on a user's general interests and listening history.

Furthermore, claim 1 has been amended to clarify that "each broadcast element [has] at least one broadcast type, wherein the broadcast elements include broadcast elements of at least two types." Claim 1, as amended, also recites "a broadcast element selector *having at least one broadcast element selection function for each broadcast type*, wherein each broadcast element selection function is operable to select broadcast elements from said data storage device based on a user's user profile, the user's user state, and the information associated with each of said plurality of broadcast elements." Thus, for example, a function to select news and a function to select music and a function to select sports scores may all separately coexist. Wolfe, however, nowhere discusses the utilization of a separate function to select each type of broadcast element.

For at least the reasons discussed above, it is respectfully submitted that the rejection of claim 1 be withdrawn. Because claims 2-12 and 14-22 depend from and therefore

include all the limitations of claim 1, it is respectfully requested that the rejection of these claims be withdrawn as well.

Claim 29 was rejected by the Examiner under the same reasoning as claim 1. Applicants have amended this claim to recite limitations similar to those of amended claim 1. Accordingly, it is respectfully submitted that the rejection of claim 29, and of claims 30-34, 36 and 37 which depend from and therefore include all the limitations of claim 29, should be withdrawn.

The Examiner also rejected claim 23 as being anticipated by Wolfe. Claim 23 has been amended to recite “*an audio element cache* for storing a plurality of audio elements that corresponds to a user profile.” Although Wolfe utilizes databases to retain information regarding advertisements and musical selection, Wolfe nowhere teaches or suggests temporary storage of the advertisements and songs determined to correspond to a particular user’s preferences. Further, Wolfe certainly does not teach or suggest the use of cache memory for such storage.

In light of the above reasoning, it is respectfully submitted that the rejection of claim 23 should be withdrawn. Because claims 24-28 depend from and therefore include all the limitations of claim 23, these claims should also be allowed.

#### **IV. THE 35 U.S.C. § 103(a) REJECTIONS SHOULD BE WITHDRAWN**

The Examiner rejected claims 13 and 35 under 35 U.S.C. § 103(a) as unpatentable over Wolfe in view of Mackintosh. The Examiner acknowledges that Wolfe does not disclose use of a wireless communications network as the transmission media for broadcasting. It is also noted that Wolfe fails to disclose audio elements including talk by a DJ. However, the Examiner

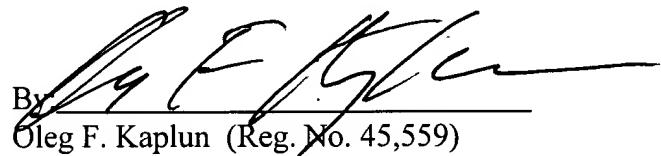
asserts that these deficiencies are cured by Mackintosh. Mackintosh describes a method and system for transmitting supplemental materials (e.g., images, video clips, audio clips, etc.) along with broadcast materials (e.g., music and advertisements).

Mackintosh fails to cure the defects of Wolfe discussed above with respect to the §102(e) rejection of claims 1 and 29. Accordingly, Applicants respectfully submit that Wolfe and Mackintosh, either alone or in combination, neither teach nor suggest a “broadcast element selector having at least one broadcast element selection function for each broadcast element” as recited in amended claims 1 and 29. Thus, Applicants respectfully request that the rejections of dependent claims 13 and 35 be withdrawn.

## CONCLUSION

In view of the amendments and remarks submitted above, Applicants respectfully submit that all of the claims pending in the present application are in condition for allowance. All issues raised by the Examiner have been addressed, and a favorable action on the merits is thus earnestly requested.

Respectfully submitted,

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